*** THE HON'BLE MR JUSTICE RAMESH RANGANATHAN**

+ WRIT PETITION NO : 22904 of 1994

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% 15-06-2005

Chunduru Muralidhara Rao Petitioner

Vs.

$ The Depot Manager A.P.S.R.T.C. Nellore II Depot
Nellore.
Respondent

! MR.G.VIDYASAGAR

^ Counsel for respondent No.1: G.P. for Labour

Counsel for the Respondent Nos 2 & 3: MR.R.MANMADHA REDDY (SC FOR APSRTC)

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>Head Note

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1) (2005) 3 Supreme Court Cases 134

IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

WEDNESDAY, THE FIFTEENTH DAY OF JUNE
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE RAMESH RANGANATHAN

WRIT PETITION NO : 22904 of 1994

Between:

Chunduru Muralidhara Rao S/o.Venkateshwar Rao
C/o.Gowrisetti Ravamma D.No.1/492,Lingabalija Street
Nawabpet Nellore.

..... PETITIONER

AND

1 The Labour Court Rep.by its Presiding Officer
Guntur.
2 The Depot Manager A.P.S.R.T.C. Nellore II Depot
Nellore.
3 The Divisional Manager
A.P.S.R.T.C. Nellore.

.....RESPONDENT(S)

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue an order, direction or writ more particularly one in the nature of Writ of Certiorari and after calling for the records from first respondent quash the award of

the Labour Court, Guntur dated 30-4-1994 published on the notice board of the 1st respondent on 12-7-1994 in so far as it relates to denial of back wages is concerned as illegal and arbitrary and consequently direct the respondents 2 and 3 to 1) pay back wages to the petitioner from the date of removal till the date of Reinstatement; 2) to appoint the petitioner as Junior Asst with effect from 19-8-1988 in pursuance of the orders of the Regional Manager, Nellore in proceedings No.E4/502(7)/87-RM(VSR) dt.19-8-1988 with all consequential benefits; 3) to grant such other relief or reliefs as this Hon'ble court deems fit and proper

Counsel for the Petitioner: MR.G.VIDYASAGAR /Mr.G.Ravi Mohan

Counsel for respondent No.1: G.P. for Labour

Counsel for the Respondent Nos 2 & 3: MR.R.MANMADHA REDDY (SC FOR APSRTC)

The Court made the following :

JUDGMENT:

This writ petition is filed challenging the award of the Labour Court, Guntur in I.D.No.70 of 1992 dated 20-4-1994 in so far as it relates to denial of back wages. Consequential directions are sought against the respondents for payment of back wages from the date of removal till the date of reinstatement and to appoint the petitioner as Junior Assistant with effect from 19-8-1988.

The brief facts relevant for adjudication of the writ petition are as follows:

The petitioner was a conductor employed by the respondent – APSRTC. He was suspended on 6-8-1988 pending enquiry for mis-behaviour and insubordination towards his higher authorities. On 17-7-1988, when he was on duty in Nellore town service, the petitioner is said to have demanded ticket from a Traffic Inspector and when the Traffic Inspector advised him to move the bus while collecting tickets and not to continuously sit while issuing tickets to the passengers, the petitioner is alleged to have become wild and demanded the Traffic Inspector to produce his warrant for travel and to prove his identity. The petitioner is alleged to have stopped the bus and created a scene in the presence of passengers and to have entered into a verbal clash with the Traffic Inspector forcing the latter to get down from the bus. On a complaint by the Traffic Inspector alleging insubordination by the petitioner –

conductor, a preliminary enquiry was conducted, pursuant to which the petitioner was suspended on 6-8-1988, pending enquiry. A Charge sheet was issued to the petitioner levelling seven charges, a full-fledged enquiry was conducted and the Enquiry Officer gave his report holding that the charges were proved. The petitioner was issued a final show cause notice and consequently removed from service. On his appeal being rejected by the Regional Manager, A.P.S.R.T.C, the petitioner approached the Labour Court under Section 2-A(2) of the Industrial Disputes Act, 1947.

The case of the respondent before the Labour Court was that the petitioner knew about the identity of the Traffic Inspector through a senior clerk traveling on the same bus, in spite of which, the petitioner refused to hand over the S.R. and instead demanded a ticket from the Traffic Inspector. The petitioner is stated to have stopped the bus causing inconvenience to the general public Both the parties agreed before the Labour Court that the matter may be disposed of on the basis of documents available on record. The Labour Court framed the following issue for consideration:

> "Whether the removal imposed on by the management is justified? And if not to
>
> what relief?"

The Labour Court upheld the validity of the domestic enquiry, examined the matter and gave its findings based on the evidence on record and the enquiry report. The Labour Court held that both the petitioner and the Traffic inspector appeared to be egoistic and that the petitioner – conductor had no explanation for his insistence on the Traffic Inspector purchasing a ticket even when he was identified by a Senior Clerk, who was traveling on the bus. The Labour Court, at the same time, held that the presence of Senior Clerk was doubtful and there was any amount of justification

for the conductor in asking the Traffic Inspector to purchase a ticket. The Labour Court held that the services of APSRTC were being extended to places where the presence of such services were not altogether required, under those circumstances there was no surprise that the Traffic Inspector wanted to travel in the bus free of cost and that the behaviour of the petitioner-conductor was not short of extremities. The Labour Court further held that after being informed that the person was a Traffic Inspector, who by virtue of his office is free to travel without paying for a ticket, the petitioner conductor should have cooled down and allowed free travel without demanding ticket from the Traffic Inspector. The Labour Court held that both the conductor and Traffic Inspector were equally responsible for the incident, but, the Department chose to proceed against the workman alone. The Labour Court doubted the presence of the Senior Clerk in the bus making the report vulnerable and susceptible for justifiable criticism. The Labour Court held that the findings of the enquiry officer were too harsh in the circumstances of the case.

It is the workman alone who has chosen to challenge the award passed in I.D.No.70 of 1992. I am informed across the bar that the respondent APSRTC has not chosen to challenge the award in I.D.No.70 of 1992.

Sri G.Ravi Mohan, learned counsel for the petitioner contends that on an overall reading of the award, the only conclusion which can be drawn is that the Labour Court had set aside the order of termination of service of the petitioner on the ground that the charges levelled against him were not proved. I am afraid I cannot agree. It is the true that the Labour Court has not chosen to give a clear and categorical finding as to whether, in its view, the evidence on record was sufficient to hold the charges as proved. On the one hand the Labour Court held that the presence of the Senior Clerk in the bus was doubtful making the report susceptible for justifiable criticism and on the other observed that the behaviour of the petitioner was not short of extremities. The Labour Court found both the conductor and Traffic Inspector

equally responsible for the incident. The findings of the Labour Court that the behaviour of the conductor was not short of extremities and that both the conductor (petitioner) and the Traffic Inspector were equally responsible for the incident, necessarily means that the Labour Court was of the view that the charges alleged against the petitioner were proved.

In cases where the charges leveled against a workman are held not to have been proved and the order of termination is set aside the normal rule is for payment of back wages with denial thereof being an exception necessitating reasons to be assigned therefor by the Labour Court. The consequences of charges leveled against a workman being held proved by the Labour Court would however be altogether different. Once the charges are held to have beeen proved, then the question which the Labour Court would be required to examine under Section 11-A of the Industrial Disputes Act is regarding the quantum of punishment. If back wages are denied as a measure of punishment and if the Labour Court is of the view that the order of removal ought to be set aside while denying back wages to the workman, exercise of such powers by the Labour Court, under Section 11 A of the Industrial Disputes Act, is within its jurisdiction and it is not for the High Court under Article 226 of the Constitution, except under exceptional circumstances, to substitute its view for that of the Labour Court.

Section 11-A confers powers on the Labour Court to direct reinstatement of the workman on such terms and conditions, if any, as it thinks fit or give such other relief to the workman including award of any lesser punishment as the circumstances of the case may require. Sri G.Ravi Mohan, learned counsel for the petitioner contends that while exercising its powers under Section 11-A of the Industrial Disputes Act, the Labour Court has to necessarily hold that the punishment imposed is disproportionate before modifying the punishment and is bound to give reasons for imposing a punishment, even if it is a lesser punishment.

While it would certainly be desirable that the Labour Court gives reasons for exercising its powers under Section 11-A, failure to do so, would not automatically result in such exercise of discretion by the Labour Court being set aside in judicial review proceedings under Article 226 of the Constitution of India. It cannot be said that the charges held proved against the petitioner in the present case does not warrant imposition of punishment of even denial of back wages. The contention advanced, if accepted as an absolute proposition of law, would in fact, go against the petitioner since on the order of punishment of denial of back wages, as imposed by the Labour Court being set aside, the order of removal imposed by the respondent APSRTC would revive.

It s settled law that the discretion, which Labour Courts/Industrial Tribunals can exercise under Section 11-A of the Industrial Disputes Act, is available only on the existence of certain factors like the punishment being so disproportionate to the gravity of misconduct so as to disturb the conscience of the Court or the existence of any mitigating circumstances, which require reduction of the sentence, or past conduct of the workman which may persuade the Labour Court to reduce the punishment. In the absence of any such factors existing, the Labour Court cannot by way of sympathy alone exercise the power under Section 11- A of the Act and reduce the punishment (**MAHINDRA AND MAHINDRA LTD v N.B.NARAWADE paragraph-20)**.

The award of the Labour Court in I.D.No.70/92 was passed on 20-4-1994, more than eleven years ago and at this length of time, no useful purpose would be served in remanding the matter back to the Labour Court directing it to record reasons for exercise of its powers under Section 11-A of the Industrial Disputes Act. Denial of back wages, in the circumstances of the present case, is an exercise of discretion by the Labour Court under Section 11 A of the Industrial Disputes Act,

which cannot be said to be an order which shocks the conscience of the Court and does not, at this belated stage, call for interference by this Court under Article 226 of the Constitution of India.

It must however be stated that the findings recorded by the Labour Court, on the evidence available on record in the present case, leaves much to be desired. Ambiguous conclusions/findings of the Labour Court has necessitated a detailed examination by this Court of the entire evidence on record merely to find out whether or not the Labour Court has held the charges leveled against the petitioner workman as having been proved. Needless to state that awards of Labour Court/Tribunal should contain clear and categorical findings on issues, which arise for consideration, after proper appreciation of the evidence on record. In the absence of clear findings, the High Court under Article 226 has to take upon itself the task of not only examining the entire evidence on record, but also to try and fathom the findings/ conclusions which the Labour Court has arrived at.

As referred to supra, the findings of the Labour Court, that the behaviour of the conductor was not short of extremities and that both the conductor (petitioner) and the Traffic Inspector were equally responsible for the incident, necessarily means that it was of the view that the charges levelled against the petitioner were proved. Since the charges levelled against the petitioner workman have been held by the Labour Court to have been proved, denial of back wages is as a measure of punishment, a power exercised by the Labour Court under Section 11-A of the Industrial Disputes Act. Certain ambiguous findings of the Labour Court notwithstanding, denial of back wages, imposed as a measure of punishment by the Labour Court, instead of the punishment of removal imposed by the respondent APSRTC, cannot be said to be a punishment which shocks the conscience of this Court. In the circumstances of the present case, the discretion exercised by the Labour Court, does not call for any interference.

Challenge to the award, in so far as it relates to denial of back wages, fails. The other relief to appoint the petitioner as Junior Assistant with effect from 19-9-1988 not being subject matter of the award in I.D.No.70 of 1992 dated 30-4-1994 cannot be examined by this Court in exercise of its Certiorari jurisdiction, under Article 226 of the Constitution of India.

The writ petition fails and the same is dismissed, but in the circumstances, without costs.

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-06-2005

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To:

1. The Presiding Officer, Labour Corut,
   Guntur.
2 The Depot Manager A.P.S.R.T.C. Nellore II Depot
   Nellore.
3 The Divisional Manager
   A.P.S.R.T.C. Nellore.

4. Two C.Cs. to G.P. for Labour, High Court buildings, Hyderabad (OUT)

5. Two C.D. copies

6. One fair copy to the Hon'ble Sri Justice Ramesh Ranganathan (for his Lordships perusal)

7. Eight L.R. copies

8. The Under Secretary, Union of India, Ministry of Law, Justice and Company Affairs, New Delhi

9. The Secretary, A.P. Advocates Association, High Court of A.P. Hyderabad